

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

VOXPATH RS, LLC

Plaintiff,

v.

Civil Action No. 2:10-cv-00160

UNOPPOSED MOTION TO
CONSOLIDATE

- (1) LG ELECTRONICS U.S.A., INC.;
- (2) LG ELECTRONICS INC.;
- (3) DENON ELECTRONICS (USA), LLC;
- (4) D&M HOLDINGS, INC.;
- (5) DESAY A&V SCIENCE AND
TECHNOLOGY CO. LTD.;
- (6) BEST BUY CO., INC.;
- (7) BESTBUY.COM, LLC;
- (8) BEST BUY STORES, L.P.;
- (9) BEST BUY ENTERPRISE SERVICES,
INC.;
- (10) PANASONIC CORPORATION OF
NORTH AMERICA;
- (11) PANASONIC CONSUMER
ELECTRONICS COMPANY;
- (12) PANASONIC CORPORATION;
- (13) SAMSUNG ELECTRONICS AMERICA,
INC.;
- (14) SAMSUNG ELECTRONICS CO.;
- (15) SONY CORPORATION OF AMERICA;
- (16) SONY COMPUTER ENTERTAINMENT
INC.;
- (17) SONY COMPUTER ENTERTAINMENT
AMERICA INC.;
- (18) SONY ELECTRONICS INC.;
- (19) SONY CORPORATION;
- (20) TOSHIBA AMERICA, INC.;
- (21) TOSHIBA AMERICA CONSUMER
PRODUCTS, L.L.C.;
- (22) TOSHIBA CORPORATION;
- (23) ONKYO U.S.A. CORPORATION;
- (24) ONKYO CORPORATION;
- (25) PIONEER ELECTRONICS (USA) INC.;
- (26) PIONEER CORPORATION;
- (27) HEWLETT-PACKARD COMPANY;
- (28) JVC AMERICA, INC.;
- (29) JVC AMERICAS CORP.;
- (30) JVC COMPANY OF AMERICA;
- (31) JVC KENWOOD HOLDINGS, INC.;
- (32) VICTOR COMPANY OF JAPAN,

LIMITED;	:
(33) JVC OPTICAL COMPONENTS	:
(THAILAND) CO., LTD.;	:
(34) YAMAHA CORPORATION;	:
(35) YAMAHA CORPORATION OF	:
AMERICA; and	:
(36) YAMAHA ELECTRONICS	:
CORPORATION,	:
	:
Defendants.	X

UNOPPOSED MOTION TO CONSOLIDATE PROCEEDINGS

Plaintiff VoxPath RS, LLC ("VoxPath") and Defendants Best Buy Co., Inc., Bestbuy.Com, LLC, Best Buy Stores, L.P., Best Buy Enterprise Services, Inc., Samsung Electronics America, Inc., Samsung Electronics Co., Ltd., Sony Corporation of America, Sony Computer Entertainment America Inc., Sony Electronics Inc., LG Electronics U.S.A., Inc., LG Electronics Inc., Toshiba America, Inc., Toshiba America Consumer Products, L.L.C., Toshiba Corporation, Onkyo U.S.A. Corporation and Onkyo Corporation (collectively, "the Moving Defendants")¹, move pursuant to Rule 42(a)(2) of the Federal Rules of Civil Procedure to consolidate *VoxPath v. Denon Electronics (USA), LLC et al.*, C.A. 2:09-CV-00364-TJW-CE (E.D. Tex.) ("*VoxPath I*") into *VoxPath v. LG Electronics U.S.A., Inc et al.* C.A. 2:10-cv-00160-TJW (E.D. Tex.) ("*VoxPath II*"). Consolidation is appropriate because the VoxPath I and VoxPath II actions involve common questions of fact and law, as discussed in more detail below.

VoxPath initiated *VoxPath I* against the Moving Defendants on November 19, 2009, alleging infringement of U.S. Patent No. 5,450,378 ("the '378 Patent"). No initial status

¹ This motion is joined by the *VoxPath I* defendants that have entered an appearance but not the defendants that have settled or are in the process of settling with plaintiff (e.g., Denon Electronics (USA), LLC, D&M Holdings, Inc, Panasonic Corporation of North America, Panasonic Consumer Electronics Company, Panasonic Corporation, Pioneer Electronics (USA) Inc. and Pioneer Corporation).

conference has yet been held. The previously scheduled August 30, 2010 initial status conference (VoxPath I Dkt. 130) was cancelled in anticipation of the present motion. (VoxPath I Dkt. 136.)

On May 17, 2010, VoxPath initiated *VoxPath II* against the Moving Defendants and several additional defendants not named in VoxPath I including Desay A&V Science and Technology Co. Ltd., Hewlett-Packard Company, JVC America, Inc., JVC Americas Corp., JVC Company of America. JVC Kenwood Holdings, Inc., Victor Company of Japan, Limited, JVC Optical Components (Thailand) Co., Ltd., Yamaha Corporation, Yamaha Corporation of America and Yamaha Electronics Corporation (collectively "the Additional Defendants"). *VoxPath II* is also an action for patent infringement. Specifically, VoxPath alleges that the Moving Defendants and the Additional Defendants have infringed U.S. Patent No. 6,304,530. Additionally, the *VoxPath II* complaint alleges that the Additional Defendants have infringed the '378 Patent. No initial status conference has yet been scheduled.

Both *VoxPath I* and *VoxPath II* involve questions of law and fact concerning patent infringement and/or validity of the '378 Patent, and consolidation will conserve judicial resources. For these reasons, VoxPath and the Moving Defendants have agreed to consolidate *VoxPath I* into *VoxPath II*. Moreover, while answers have not yet been filed in *VoxPath II* for all of the Additional Defendants, counsel for the Moving Defendants have attempted to contact counsel for the Additional Defendants to request consent. In this regard, counsel for JVC Americas Corp. (the only JVC entity that has been served and not dismissed) has advised that JVC Americas Corp. will not oppose this motion. Similarly, counsel for Hewlett-Packard Company has advised that it will not oppose this motion. Counsel for the Yamaha related defendants have been contacted and are attempting to obtain authorization from their client but have not advised us of any intent to oppose the motion.

Accordingly, the Plaintiff and Moving Defendants respectfully request that the Court consolidate *VoxPath I* into *VoxPath II* such that all further filings and proceedings in either action take place in *VoxPath II* (i.e., *VoxPath v. LG Electronics U.S.A., Inc et al.* C.A. 2:10-cv-00160-TJW (E.D. Tex.)).

Furthermore, in view of consolidation and the fact that not all of the parties of *VoxPath II* have officially entered appearances, Plaintiff and the Moving Defendants hereby request that the court vacate its Order dated July 21, 2010. (*VoxPath I* Dkt. 130.) In addition to the now cancelled August 30, 2010 initial status conference (*VoxPath I* Dkt. 136), the Order of July 21, 2010 concerns the submission of proposed docket control and discovery orders (September 13, 2010), the initial case management conference (September 29, 2010) and disclosure of asserted claims and infringement contentions (September 17, 2010). The Plaintiff and Moving Defendants have consented to an adjournment of at least four months of these dates to permit the remaining parties to answer. Thus, it is proposed that the initial status conference for the consolidated matters take place no earlier than January 4, 2011.

A proposed order for these purposes is attached to this motion.

Dated: September 2, 2010

Respectfully submitted,
By: /s/ Robert W. Weber
Gregory S. Gewirtz
E-mail: ggewirtz@ldlkm.com
LERNER, DAVID, LITTENBERG,
KRUMHOLZ & MENTLIK, LLP
600 South Avenue West
Westfield, NJ 07016
Tel: 908.654.5000
Fax: 908.654.7866
Gregory S. Gewirtz

OF COUNSEL

Robert W. Weber
Texas Bar No. 21044800
SMITH WEBER, LLP
5505 Plaza Drive

Texarkana, TX 75503
Tel: 903.223.5656
Fax: 903.223.5652
Email: bweber@smithweber.com

*Attorneys for Defendants
Sony Corporation of America,
Sony Computer Entertainment America Inc.,
and Sony Electronics Inc.*

CERTIFICATE OF CONFERENCE

Counsel for Defendants, Sony Corporation of America, Sony Computer Entertainment America Inc., and Sony Electronics Inc., conferred with all parties on August 30 and 31 and September 1 and 2, 2010, and represents that this Motion is unopposed.

Counsel for Yamaha is still in the process of seeking authorization from their clients concerning the motion but they have not expressed an intent to oppose it.

/s/ Robert W. Weber
Robert W. Weber

CERTIFICATE OF SERVICE

The undersigned hereby certifies that all counsel of record who are deemed to have consented to electronic service are being served with a copy of this document via the Court's CM/ECF system per Local Rule CV-5(a)(3). Any other counsel of record will be served by facsimile transmission and/or first class mail this 2nd day of September, 2010.

/s/ Robert W. Weber
Robert W. Weber